IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.1429 OF 2005

Indrayani Industries
Association ...Petitioner.

V/s.

The Union of India and Ors. ...Respondents.

Mr.D.G.Bhanage for the Petitioner.
Mr.S.S.Sarkar for the Respondent no.1.
Mr.H.V.Mehta for the Respondent Nos.2 & 3.

CORAM: A.P.SHAH &
J.H.BHATIA, JJ.
DATE : 11th July, 2005.
P.C.:

1. The Petitioner seeks to challenge the Notification dated 24/6/04 issued by the Central Government under section 1(3) of the Employees State Insurance Act, 1948, whereby the Central Government has made the provisions of the said Act applicable to all the factories covered under section 2(12) of the said Act situated in villages of Markal, Dhanore, Solu, Charoli and Alandi in the Pune district. These villages have been included in Pimpri-Chinchwad Municipal Corporation which is already covered by the provisions of the said Act. The Notification is challenged mainly on the ground that the Respondents have

not provided necessary infrastructure to avail the benefits of the Employees Insurance Scheme. It is alleged that nearest E.S.I.Hospital in Chinchwad is 30 kilometres away whereas, the E.S.I. Hospital which has the necessary arrangements for treating serious illness, is in Aundh which is 40 kilometres away. There is only one doctor on the panel of E.S.I. Corporation for more than 3,000 employees in the concerned villages. There is no medical store in this area. The facilities like medical store, ambulance, etc. are also not available. It is contended that the Central Government ought not to have issued the impugned Notification without making provision for necessary infrastructure.

3. The object of E.S.I. Act is to provide certain benefits to the employees in case of sickness, maternity and employment injuries and to make provisions for certain other matters in relation thereto. Section 38 of the Act casts statutory obligation on the employer to insure his employee and E.S.I.Corporation is bound to provide benefits admissible under the said act to the insured

persons who are employees in insureable employment. It is the duty of the Corporation to recover contribution from the employers, if they fail to pay as provided under the Act. Once the Notification under section 1(3) is issued, the provisions of the Act would apply to the factories and establishments as defined under section 2(12)of the said Act.

4. The power exercised by the Central Government under section 1(3) is in the nature of conditional legislation. In the case of Basant Kumar Sarkar v. Regal Rolling Mills. (XXXVI FJR 133), the Constitution Bench of the Supreme Court held that section 1(3) of the Act, which states that the Act shall come into force on such date or dates as the Central Government may appoint and that different dates may be appointed for different provisions of the Act and for different States or for different parts thereof, is not invalid on account of excessive delegation. It is not an example of delegated legislation but is a case of conditional legislation where the Act has prescribed a self-contained code in regard to the insurance of the employees covered by

it and appropriate provisions and remedies have been laid down for carrying out the policy of the Act as laid down in the relevant sections and only when a notification should be issued and in respect of what factories it should be issued has been left to the discretion of the Central Government. The Court further held that even if there is an element of excessive delegation in the provision, there is enough guidance given by the relevant provisions of the Act and the scheme of the Act itself. In the light of this settled legal position the challenge to the constitutional validity of the Notification cannot be accepted.

5. Coming then to the alleged deficits in the infrastructure , it has been pointed out in the Affidavit in Reply filed on behalf of the Corporation that one panel doctor has been already appointed for the purpose of administering medical benefits. It is also stated that more panel doctors will be appointed to serve industrial workers who are required to be covered under the provisions of the E.S.I.Act. The learned counsel appearing

for the Respondents assured the Court that all the necessary facilities including adequate number of panel doctors, medical store, ambulance, etc. will be shortly made available in this area which is now part of Pimpri-Chinchwad Municipal Corporation.

6. The Corporation is directed to take necessary steps to provide the necessary infrastructure within six months from today and submit the report to the Registrar General of this Court on or before 16th January, 2006 with a copy to the Petitioners. The Petition stands disposed of.

(A.P.SHAH,J.)

(J.H.BHATIA, J.)